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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/970,146	10/02/2001	Eric G. Lovett	279.262US1	9587
21186	7590	01/09/2006	EXAMINER	
SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH 1600 TCF TOWER 121 SOUTH EIGHT STREET MINNEAPOLIS, MN 55402			SCHAETZLE, KENNEDY	
			ART UNIT	PAPER NUMBER
			3766	

DATE MAILED: 01/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

RECEIVED

Schwegman, Lundberg,  
Woessner & Kluth, P.A.  
JAN 12 2006  
RECEIVED

PORTFOLIO IP  
JAN 12 2006  
RECEIVED

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/970,146

Applicant(s)

LOVETT ET AL.

Examiner

Kennedy Schaeetzle

Art Unit

3766

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 December 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

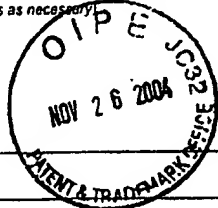
**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☒ Other: A copy of the IDS received Nov. 26, 2004 is enclosed.

KENNEDY SCHAEETZLE  
PRIMARY EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because: The Final rejection will not be vacated on the basis of a typographical error concerning the 69th claim. Claims with similar limitations were rejected and claim 69 was listed as rejected on the cover sheet. While the examiner regrets the error, the applicant should have contacted the examiner if the accidental omission of claim 69 in the rejection statement caused confusion. The arguments addressing the §102 rejections are not agreed with. The electrode disclosed in the prior art reference is substantially equivalent to that disclosed by applicant and capable of operating in the manner claimed. Regarding the §103 rejection, a reference which teaches one method of maneuvering an electrode catheter does not teach away from the application of another reference that shows an equally viable method of maneuvering the catheter. Further, the teachings of Maseda are clearly generic to any medical device requiring controlled placement within the body. Artisans of ordinary skill would have recognized the teachings to apply to any elongated medical device including those that happen to have an electrode on the device body.

Substitute for form 1449A/PTO  
**INFORMATION DISCLOSURE  
 STATEMENT BY APPLICANT**  
 (Use as many sheets as necessary)



PTO/SB/06A(10-01)  
 Approved for use through 10/31/2002. OMB 651-0031  
 US Patent & Trademark Office, U.S. DEPARTMENT OF COMMERCE  
 Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.

Complete if Known	
Application Number	09/970,146
Filing Date	October 2, 2001
First Named Inventor	Lovett, Eric
Group Art Unit	3762
Examiner Name	Schaetzle, Kennedy
Attorney Docket No: 279.262US1	

Sheet 1 of 1

**US PATENT DOCUMENTS**

Examiner Initial *	USP Document Number	Publication Date	Name of Patentee or Applicant of cited Document	Filing Date If Appropriate
	US-2004/0127889 A1	07/01/2004	Zhang, Yongxing , et al.	04/30/2003
	US-5,300,106	04/05/1994	Dahl, R. W., et al.	06/07/1991
	US-5,683,447	11/04/1997	Bush, M. E., et al.	12/19/1995
	US-5,693,081	12/02/1997	Fain, Eric S., et al.	10/11/1995
	US-5,782,841	07/21/1998	Ritz, James A., et al.	08/10/1993
	US-6,324,414	11/27/2001	Gibbons, Paul , et al.	05/18/1999
	US-6,332,089	12/18/2001	Acker, David E., et al.	02/14/1997

**FOREIGN PATENT DOCUMENTS**

Examiner Initials *	Foreign Document No	Publication Date	Name of Patentee or Applicant of cited Document	T <sup>2</sup>
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**OTHER DOCUMENTS -- NON PATENT LITERATURE DOCUMENTS**

Examiner Initials *	Cite No <sup>1</sup>	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published.	T <sup>4</sup>
		MEASURAND INC., "S700 & S710 Joint Angle ShapeSensor Spec Sheet, S720 Miniature Joint Angle Shape Sensor, S290 12 Bit Data Acquisition System", <a href="http://www.measurand.com/products/shapesensors-literature.html">www.measurand.com/products/shapesensors-literature.html</a> , (September 12, 2002), 5 pgs.	
		MEASURAND INC., "ShapeRecorder Software User Instructions", <a href="http://www.measurand.com">www.measurand.com</a> , (2002), 66 pgs.	
		MEASURAND INC., "ShapeTape Manual", Cautions, Description of Hardware and software options, Description and use of hardware, Instructions for ShapeWare software, Theory, (August 15, 2003), I/143-114/143, I-XIX	
		SRI INTERNATIONAL, "Research of Artificial Muscles", <a href="http://www.mmc.or.jp/info/magazine/14e/act/11/sri1.htm">www.mmc.or.jp/info/magazine/14e/act/11/sri1.htm</a> , (March 1996), 6 pgs.	
		WWW.DESIGNINSITE.DK, "Material: Dielectric Elastomers", <a href="http://web.archive.org/web/20010306073022/www.designinsite.dk/htmlsider/insptour.htm">web.archive.org/web/20010306073022/www.designinsite.dk/htmlsider/insptour.htm</a> , Copyright 1996-2003 Torben Lenau This page is part of Design inSite, (Copyright 1996-2003), 2 Pages	

EXAMINER

DATE CONSIDERED 10-5-05

Substitute Disclosure Statement Form (PTO-1449)  
 \* EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. 1 Applicant's unique citation designation number (optional) 2 Applicant is to place a check mark here if English language Translation is attached